IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.1096 OF 2004

Shri M.J.Francis & Ors. .. Appellants

vs.

M/s. Sarosh Construction & Developers & Ors. .. Respondents

Shri Rajesh Kachare i/b. Y.M.Chaudhari, for the Appellants.

Mr.Ms. Sangeeta Shrotri Vaidya for Respondent Nos.1 to 5.

Mr. M.v.Gokulkrishna, Advocate for the Respondent no.7.

CORAM : A.S.OKA, J.

DATED : 1st February, 2005.

P.C. :

1. Admit. The advocates appearing for the respondents waive service. Considering the fact and circumstances of the case, taken up forthwith for hearing.

2. After arguing the appeal for some time, the learned Counsel appearing for the appellants/plaintiffs fairly states that there are

no specific prayers made for interim relief in the application at exhibit 5. In the circumstances, on instructions he prays that he may be allowed to withdraw the application at exhibit 5 with liberty to file appropriate application.

3. The learned Counsel appearing for the respondent Nos.1 to 5 submitted that written statement is already filed by the Respondent Nos. 1 to 5 and therefore, instead of granting liberty to the appellants, hearing of the suit may be expedited.

4. Perusal of the application at exhibit 5 shows that there are no specific prayers made in the said application as rightly pointed out by the learned Counsel appearing for the appellants. Considering the fact that the application itself was defective, the request of the learned Counsel for the appellants deserves to be granted.

5. Hence I pass the following order:

i) Appellants are permitted to withdraw the

application at exhibit 5 made in Special Civil Suit No.124 of 2003. Consequently, the impugned order dated 19.4.2004 has become inoperative.

ii) The appellants will be at liberty to take out appropriate application claiming appropriate interim reliefs. If such application is made, the learned trial Judge will decide the said application on its own merits.

iii) Appeal is disposed of in above terms with no order as to costs.

. Parties to act on the authenticated copy of this order.

(A.S.Oka, J.)